IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Second Appeal No.71/2006

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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CORAM : A.P. Lavande, J.
Dated : November 9, 2006

Heard Mr. Kadukar, Advocate for the appellant and Mr. Dhanagare, Advocate for the respondent.

By this appeal, the appellant takes exception to the judgment and decree dated 19th August 2005 passed by Additional District Judge, Akola in Regular Civil Appeal No.263/2000 partly allowing the appeal filed by the respondent against judgment and decree dated 1.2.1997 passed by Joint Civil Judge, Senior Division, Akola in Special Civil Suit No.247/93.

The plaintiff who is the sister-in-law of the defendant filed the above suit for recovery of the amount of Rs. 43,000/- which was advanced to the defendant by

way of loan on 12.12.1984 along with interest thereon @ 1.5% per month. The suit was contested by the defendant inter alia on the ground that the transaction was money lending transaction. The trial Court negatived the defence of the defendant and passed the decree in favour of the plaintiff granting interest @ 18% per annum till filing of the suit and thereafter interest @ 6% per annum from the date of suit till realisation of the entire amount. In appeal preferred by the defendant, the appellate Court held that the plaintiff was entitled to the amount of Rs. 43,000/- which was advanced to the defendant, however, reduced the interest from 18% per annum to 6% per annum on the principal amount of Rs. 43,000/-.

Mr. Kadukar, Advocate for the appellant-plaintiff submitted that the defendant had admitted that he would pay interest @ 1.5% per month on the amount advanced to him. Placing reliance upon Exhibit Nos. 40, 42, 43 and 44, Mr. Kadukar submitted that the said documents clearly

establish that the defendant admitted his liability to pay interest @ 1.5% per month. He, therefore, submitted that the decree passed by the lower appellate Court reducing interest from 18% per annum to 6% per annum deserves to be quashed and set aside.

Per contra, Mr. Dhanagare, Advocate for the respondent-defendant submitted that lower appellate Court has rightly held that the defendant was not liable to pay interest @ 18% per annum since the same was against law having regard to the fact that the transaction was not commercial transaction but was a transaction between sister-in-law and brother-in-law. He further submitted that having regard to the facts of the case, it would be unjust to set aside the decree passed by the lower appellate Court and, therefore, no interference is called for in the appeal.

I have considered the submissions made by learned Advocates appearing for

the parties. I have perused the records.

The trial Court held that the defendant had agreed to pay interest @ 1.5% per month on the sum advanced to him whereas the lower appellate Court held that the documents on record did not establish clear admission on the part of the defendant to pay interest @ 18% per annum. The lower appellate Court further held that even if such agreement was there, the same was against law and, therefore, reduced interest from 18% per annum to 6% per annum. Admittedly, the transaction is between sister-in-law and brother-in-law. Therefore, I do not find any infirmity in the finding recorded by the lower appellate Court that the plaintiff was not entitled to interest @ 18% per annum on the amount advanced by the plaintiff to her brother-in-law. Therefore, grant of interest was in the discretion of the Court and in my opinion, the lower appellate Court has rightly exercised the discretion in refusing interest from 18% per annum as granted by the trial

Court to 6% per annum, more particularly, having regard to the fact that the transaction was between sister-in-law and brother-in-law. I do not find any ground to interfere in exercise of jurisdiction under section 100 of the Code of Civil Procedure against impugned decree. In any event, no substantial question of law is involved in the appeal. Hence, the appeal is rejected.

C.A. No.5236/2006

In view of dismissal of the appeal, nothing survives in the application, the application stands dismissed.

JUDGE

A.